

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1464 of 1999
with
CIVIL APPLICATION NO.4190 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

AMC

Versus

BHARATBHAI GORDHANBHAI PATEL

Appearance:

MR HS MUNSHAW for Petitioner
MR DIPAK R DAVE for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25 /08/1999

C.A.V. JUDGEMENT

1. These two cases are proposed to be disposed of by common judgment.
2. The aforesaid Special Civil Application has been filed by the Ahmedabad Municipal Corporation challenging the award, dated 18.12.1998 passed by the Labour Court,

Ahmedabad in Reference (LCA) No.1598/88 vide annexure "B" to the writ petition, and has prayed that the said award be quashed.

3. The brief facts giving rise to this petition are as under:

The respondent was an employee of the petitioner as Care Taker of the Rest House owned by the petitioner and situated opposite S.T.Bus stop, Astodia, Ahmedabad. He was working since 9 years. On 30.4.1985 his duty hours were from 8.00 p.m. to 8.00 a.m. One Babubhai C.Maheria, a Junior Clerk was on duty during noon time. The respondent was not on duty in the noon time in the Rest House. He came to the Rest House in a drunken state with a lady named Manekben Kantilal. He reached the Rest House and directed the Junior Clerk Babubhai C.Maheria to open the Room No.10. The respondent had misbehaved with the lady. Later on the lady-Manekben Kantilal managed to escape and complained to the Military Camp located in the compound of the Municipal Corporation. The Military officers arrested the respondent and sent him to Gaekwad Haveli Police Station. A complaint was also filed against the respondent in the court of Metropolitan Magistrate No.12 under Prohibition Act and he was convicted and sentenced to a period till the rising of the court and to pay fine of Rs.100/- and in default to undergo 15 days imprisonment. A vigilance enquiry was also conducted on the allegations made on the complaint of the lady. The vigilance enquiry resulted in 7 pages report on the basis of which charge-sheet was issued to the respondent on 22.4.1987. Fulfilledged departmental enquiry was conducted against the respondent and the charges levelled against him were proved and he was dismissed from service vide order dated 17.9.1987. Against this order the respondent moved a reference before the Labour Court. The Labour Court entertained the written statement of the petitioner and after hearing the two sides and perusing the entire record the labour court rendered the impugned award directing reinstatement of the respondent with no backwages. It was however ordered that the punishment of stoppage of 5 increments will be awarded with permanent effect to the respondent. It is this award which is under challenge. The order of dismissal was set aside by the labour court.

4. I have gone through the writ petition and the counter affidavit filed by the respondent. Learned counsel for the parties were heard. The prayer in the counter affidavit is that this court may interfere with the award and direct reinstatement with full backwages

without inflicting any punishment. No writ petition has been filed by the respondent and on the strength of para 7 of the counter affidavit no directions can be given for reinstatement with full backwages without inflicting any punishment.

5. The contention of the learned counsel for the petitioner has been that the misconduct against the respondent was fully established and as such dismissal of the respondent was the only adequate punishment and the labour court erred in directing reinstatement, withholding backwages and in awarding stoppage of five annual increments. Learned counsel for the petitioner further contended that on similar allegations one Mohmadsarif I.Chippa who was working as Public Hall Manager in the Estate Department of the Municipal Corporation was dismissed from service. He raised industrial dispute. His dismissal order was maintained. The labour court refused to interfere with the order of dismissal. The matter was agitated before this court in the Special Civil Application No.5155/91 which was dismissed by this court on 28.9.1992. Letters Patent Appeal No.232/93 was filed against this judgment which was also dismissed on 22.6.1993. Hence, the order of the labour court is illegal inasmuch as it has ignored these two judgments which were placed by the petitioner before the labour court. Learned counsel for the respondent, however, argued that the allegations against M.I.Chippa were altogether different and hence the earlier judgments against that employee can not be a guiding factor in the case before the labour court initiated by the respondent. I agree with the contention of the learned counsel for the respondent. The allegations against M.I.Chippa, in short, were that while working as Public Hall Manager in the Estate Department of the Municipal Corporation in the year 1985, in the course of discharge of his duties it was found that he was involved in serious misconduct of gross negligence in discharge of his duties, conniving with antisocial activities being conducted in the Rest House, illegally accepting gratification and misusing his post and permitting the premises of the corporation for being used for antisocial activities by encouraging prostitution and thereby harming the reputation of the corporation. These allegations were certainly different from the allegations made against the respondent before me. Consequently, the effect is that the facts of the earlier writ petition can not be equated to the facts of the case before me. The allegation against the respondent before me was that he, in a drunken state, beyond duty hours, approached the Junior Clerk of the Rest House and directed him to open Room No.10. He was

with a lady. He went inside the Room No.10 and misbehaved with the lady. The lady found opportunity to escape and thereafter she made a complaint to the Military Officers located in the compound of the Corporation. The case under Prohibition Act was also filed against the respondent. Vigilance enquiry was also conducted and departmental enquiry too was conducted. These allegations can not be said to be identical to the allegations made against M.I.Chippa.

6. Now coming to the impugned award, except what is said in paragraph 14 of the award, no other reasoning has been given and other paragraphs contain only respective case of the parties and arguments advanced on their behalf. The labour court found that the main defect of the adjudication proceedings was non availability of original papers of offence. Departmental enquiry papers were brought on record. According to the labour court, since the inquiry papers were summary of the incident and summarised the statements of the concerned witnesses, the findings of the enquiry officer were not convincing to the labour court. The labour court was not agreeable with the punishment suggested by the enquiry officer. Only on this ground, the punishment awarded to the respondent was set aside. The labour court was further of the view that in the absence of original papers exact offence can not be decided and that there was no police complaint for commission of an offence of moral turpitude, hence, the benefit of doubt goes in favour of the respondent. Primarily these reasonings suffer from manifest error of law. There is error apparent on the face of the record as well as on the face of award.

7. In para 5 of the award, it is mentioned that the respondent of this petition filed purshis-Exh.11 stating that he does not contest the legality and propriety of the enquiry proceedings, but contests the findings of the enquiry officer as perverse. In view of this, it is clear that the legality and propriety of the enquiry proceedings were not challenged by the respondent before the labour court. Therefore, it is difficult to accept the contention that the enquiry stands vitiated for non-observance of principles of natural justice. Once legality and propriety of enquiry proceedings were admitted by the respondent before the labour court, he can not be permitted now to say that the enquiry was not conducted in accordance with law. It was not a case wherein abruptly departmental enquiry was conducted. On receipt of complaint from the victim, at first vigilance enquiry was constituted against the respondent. After

perusing the report of the vigilance enquiry departmental enquiry was conducted and charge-sheet(Annexure "A") was served on the respondent. It can not be said that the enquiry was malafide because it was conducted after about two years. Since the matter was entrusted for vigilance enquiry time taken for such enquiry has to be excluded. Therefore, no ground of malafide can be attributed to the petitioner in initiating the socalled belated departmental enquiry against the respondent.

8. The enquiry officer is free to adopt his own procedure for conducting enquiry. Since the propriety and legality of enquiry proceedings had not been challenged by the respondent, the finding of the enquiry officer can not be said to be perverse. The charge against the respondent was that on 30.4.1985 during the noon time when he was not on duty he came to the Rest House and directed the Junior Clerk Maheria who was on duty to open the room No.10 of the Rest House. He was in a drunken state and was with a lady. These allegations were proved during the enquiry. The petitioner submitted that it was a serious misconduct being committed under the Rules of the Corporation and accordingly dismissal order was passed. Accordingly, the learned advocate for the petitioner urged that the order of dismissal should not have been interfered by the labour court. His contention had been that the Rest House of the Municipal Corporation is kept for definite purpose and not for the employees to use the rooms in the Rest House for illegal and immoral purposes. Learned advocate for the respondent on the other hand contended that no doubt the respondent was convicted by the concerned Magistrate under the Prohibition Act but the conviction was on the plea of guilt from the respondent and this plea of guilt was offered due to poverty of the respondent. Be that as it may, the respondent was convicted for the offence of being drunk, in public place, under the Prohibition Act. Such conviction was rightly considered by the petitioner as misconduct on the part of the respondent. The learned advocate for the respondent, on the other hand, contended that the respondent No.1 was found in drunken state near the ST bus-stop, and not inside the premises of the corporation, and as such, this act of the respondent could not be construed as misconduct. Reference was made to the case of M/s Glaxo Laboratories (I) Ltd vs Presiding Officer, Labour Court, Meerut & Ors, AIR 1984 SC 505. In this case, the Apex Court, in short, laid down that misconduct should have been "committed by the employee within the premises of the establishment or in

the vicinity thereof". If the misconduct was committed in the vicinity of the premises, it will be a matter for consideration on the facts of the case as to what is the distinction between premises of the establishment and the vicinity of the scene of misconduct. The Apex Court laid down that the employer can not be permitted to act as a guardian of law for maintenance of law and order outside the premises of the establishment. Such acts of misconduct would be misconduct punishable only if committed within the premises of the establishment or in the vicinity thereof. What constitutes establishment or its vicinity would depend upon the facts and circumstances of each case.

9. The Apex court further laid down that to enable an employer to peacefully carry on his industrial activity, the Act confers powers on him to prescribe conditions of service including enumerating acts of misconduct when committed within the premises of the establishment. The employer has hardly any extraterritorial jurisdiction. He is not the custodian of general law and order situation . If the power to regulate the behaviour of the workmen outside the duty hours and at any place wherever they may be was conferred upon the employer, contract of service may be reduced to contract of slavery. The employer has both power and jurisdiction to regulate the behaviour of the workmen within the premises of the establishment, or for peacefully carrying the industrial activity in the vicinity of the establishment.

10. In my opinion, these observations of the Apex Court do not apply to the facts of the case before me. This court can not reverse the findings rendered by the enquiry officer. The charge indicates that the respondent was found drunk. He came inside the premises of the corporation and also inside the premises of the Rest House though he was not on duty and directed the Junior Clerk in charge of the rest house Shri Maheria to open Room No.10. He was with a lady. He went inside room No.10 and misbehaved with the lady. It was, therefore, act of misconduct on two grounds, firstly by entering the premises of the corporation and the rest house in a drunken state and secondly by misbehaving with a lady inside room No.10. of the rest house. These allegations were found proved in the departmental enquiry as well as in the vigilance enquiry. It is very difficult to agree with the contention that the offence under the Prohibition Act was committed by the respondent

near S.T.Bus stop. However, this fact is on the record and is established in the award itself that the rest house is situated in front of the ST bus stop, hence it can not be said that no misconduct was committed by the respondent inside the premises of the corporation. Learned advocate for the respondent further contended that when the respondent was found drunk and was punished under the Prohibition Act such an offence does not amount to an offence involving moral turpitude and hence the order of dismissal is illegal and is in excess of the guilt established against the respondent. This contention also can not be accepted. It is in the statement of allegation against the respondent that on 30.4.1985 during noon time he was not on duty and his duty hours were from 8.00 p.m. to 8.00 a.m. Thus the respondent who was not on duty during noon time on 30.4.1985 entered the premises of the rest house of the corporation in a drunken state and directed the junior clerk-Maheria to open the room No.10 and misbehaved with a lady who was with him. The lady managed to escape and approached the military officer posted in the campus of the corporation and complained to him. This activity of the respondent can certainly be called as misconduct and act of moral turpitude also inasmuch as he indecently behaved with the lady in room No.10 of the rest house and if on such established facts the respondent was dismissed from service it can not be said that the punishment awarded by the petitioner was disproportionate to the charges established against the respondent. The labour court was therefore in manifest error of law in exercising jurisdiction under Section 11-A of the Industrial Disputes Act by modifying the punishment and awarding reinstatement without backwages and stoppage of 5 annual increments with cumulative effect.

11. The anxiety of the labour court that the papers of the Prohibition case were not filed was uncalled for because the labour court was not considering or adjudicating upon the offence. It was, therefore, wholly unjustified in granting benefit of doubt to the respondent for committing offence of mortal turpitude. Even if it was a case under Prohibition Act for which offence was registered against the respondent, departmental enquiry was not barred and departmental enquiry could have been directed to investigate into the act of respondent of moral turpitude and misconduct by misbehaving indecently with a lady in a drunken state in room No.10 of the rest house. The enquiry officer considered all these allegations and found the same proved and established from the material on record. In

the absence of papers of the prohibition case the order of dismissal could not have been quashed by the labour court. Thus, this is an error apparent on the face of the award. In para 14 of the award the labour court observed that the enquiry papers itself show that the summary of the incident and summaries of the statements of the concerned witnesses were considered by the enquiry officer. The labour court in ignoring the finding of the enquiry officer has again committed error apparent on the face of the record. The labour court can be said to have acted erroneously on the face of the record because it did not consider the material evidence brought by the petitioner before it, namely, the papers of enquiry proceedings and findings of the enquiry officer. Ignoring these papers and report of the enquiry officer, the findings rendered by the labour court can safely be described as perverse findings.

12. For the reasons stated above, the award of the labour court, Ahmedabad can not be sustained. It can not be said that the punishment awarded by the petitioner to the respondent was disproportionate to the charge established against the respondent. Consequently, the order of reinstatement of the respondent has to be quashed. If the order of reinstatement can not be maintained, then subsequent portion of the award becomes redundant. Once the respondent stands dismissed, order for stoppage of 5 annual increments becomes infructuous and the order withholding backwages also becomes infructuous.

13. In the result, this writ petition succeeds and is allowed. The impugned award dated 18.12.1998 is hereby quashed with no order as to costs.

14. CA No.4190/99 is an application under Section 17B of the Industrial Disputes Act for payment of wages. Once the award directing the reinstatement of the respondent stands quashed and the order of dismissal has been maintained, respondent-applicant in this Civil Application is not entitled to any benefit under Section 17B of the I.D.Act. For these reasons this CA has become infructuous and is dismissed as infructuous with no order as to costs.

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